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VIA FEDERAL EXPRESS

Deena Sheppard, Enforcement Specialist
Environmental Protection Agency - Region 5
Superfund Division (SE-5J)
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

Re: BorgWarner Transmission Systems Inc. Response to General Notice for the Gary
Development Landfill Site in Gary, Indiana
CERCLIS ID# IND077005916

Dear Ms. Sheppard:

I write on behalf of BorgWarner Transmission Systems Inc. (BWTS) in response to the United States Environmental Protection Agency's (USEPA) General Notice Letter, dated April 20, 2012. In that letter, USEPA asserts that BWTS may be a Potentially Responsible Party (PRP) under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) for response actions and/or response costs incurred for cleanup of the Gary Development Landfill (GDL) Site. We have reviewed the Site Background document enclosed with USEPA's General Notice Letter, as well as several other documents related to the GDL Site. Based upon that review and for the reasons stated below, BWTS believes that it should not be identified as a PRP with respect to the GDL Site.

- I. Any BWTS materials disposed at the GDL Site pose no risk and are completely unrelated to any release or threatened release that USEPA contends require response action.

First, none of the contaminants of concern at the GDL Site, including the substances that USEPA has determined have been released from the GDL, have any connection with BWTS. As set forth in the Site Background document and other materials, the constituents of concern that would drive a cleanup at the GDL Site consist of heavy metals, semi-volatile organic compounds and PCBs. There is no evidence that any such materials were disposed by or for BWTS at the GDL Site. The only waste material allegedly generated by the BWTS Bellwood Illinois facility and disposed at the GDL Site is asbestos waste paper. There is no linkage between any such asbestos materials and the contaminants of concern at the GDL Site. Based upon information and belief, asbestos waste paper does not consist of or have the potential to release to the environment heavy metals, semi-volatile organic compounds or PCBs.

Moreover, even if BWTS asbestos waste paper was disposed at the GDL Site, asbestos poses no risk concerns through the two contaminated media of concern identified by USEPA at the GDL

Site – water and sediment. Generally, asbestos raises human health and environmental concerns only when the asbestos is airborne or has the potential to become airborne. USEPA has stated that asbestos is typically not inherently hazardous, “unless the asbestos is released from the source material into air where it can be inhaled.” USEPA, *Framework for Investigating Asbestos-Contaminated Superfund Sites*, OSWER Directive #9200.0-68 (Sept. 2008). There is no evidence in the administrative record that any asbestos present at the GDL Site has been released to the air, nor that there is any threat of such a release. Indeed, IDEM has found that “[t]here does not appear to be a potential risk to nearby residents by the air pathway from the Gary Development Landfill.” IDEM, *Reassessment for Gary Development Landfill* at 4-7 (Jul. 12, 2005). Thus, there is no evidence of any release or threat of release of asbestos that poses a risk to human health or the environment.

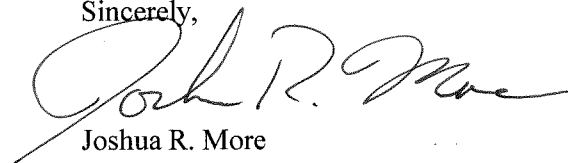
II. Based upon the facts set forth above, BWTS should not be named as a PRP at the GDL Site.

For BWTS to be a PRP, USEPA must demonstrate some nexus between BWTS’s waste and the need to perform a CERCLA response action or the incurrence of response costs. *Louisiana-Pacific Corp. v. Beazer Materials & Services, Inc.*, 811 F. Supp. 1421, 1426 (E.D. Cal. 1993) (PRP status is established through “a nexus between a party defined in section 9607 and the response costs” incurred). While it is possible that asbestos waste paper from the BWTS facility in Bellwood Illinois may have been brought to the GDL, USEPA has not provided and BWTS is not aware of any information that would create a nexus between the need to perform a CERCLA response action and the asbestos waste paper allegedly present in the GDL.

Courts have held that a party is not responsible for paying response costs if its waste did not cause the incurrence of those response costs. *See e.g., U.S. v. Township of Brighton*, 153 F.3d 307, 318 (6th Cir. 1998) (If a party can prove that it did not cause any harm to the site, it can argue that its share of damages should be fixed “at zero, despite § 9607(a)’s strict liability scheme.”) Furthermore, liability should be apportioned when the environmental harm is divisible. *Burlington Northern & Santa Fe Ry. Co. v. United States*, 556 U.S. 599, 617 (2009) (*BNSF*). Based upon the discussion above, it is clear that contaminants, if any, from materials generated by the BWTS Bellwood Illinois facility are not part of the release or threat of release at the GDL Site as to which USEPA contends some response action is necessary. There is no indication that any of the alleged environmental harm that any CERCLA action would address is related to asbestos waste paper. In other words, even if BWTS asbestos waste paper were disposed at the GDL Site, that material will not cause the incurrence of any response costs. Accordingly, it is inappropriate to identify BWTS as a PRP in this matter. Therefore, BWTS respectfully requests that USEPA withdraw its General Notice Letter to BWTS.

If you have any questions regarding this request, please do not hesitate to contact me. I thank you in advance for your assistance in this matter.

Sincerely,



Joshua R. More

cc: Sharon Jaffess, USEPA
Nicole Wood-Chi, USEPA
Richard Painter, BorgWarner Transmissions Systems Inc.

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